

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-218228.2 **DATE:** October 7, 1985  
**MATTER OF:** Rice Services, Inc.

## DIGEST:

1. Pursuant to the Federal Acquisition Regulation, 48 C.F.R. § 52.214-16 (1984), a bid that offers an acceptance period that is less than that required in the solicitation must be rejected as nonresponsive.
2. Bid that includes two different acceptance periods, one inserted by the government and the other by the bidder, is ambiguous and must be rejected as nonresponsive.
3. Agency cannot request a bidder whose bid it has properly found nonresponsive due to insertion of a 90-day acceptance period, rather than the 120-day minimum required by the solicitation, to extend its bid when, at the end of the 120 days, other bidders are asked to do so.

Rice Services, Inc. protests the allegedly improper action of contracting officials at Fort Knox, Kentucky, in refusing to allow it to extend its bid in response to invitation for bids (IFB) No. DABT23-85-B-0019, covering full food and dining services at Fort Knox. The Army considered Rice's bid nonresponsive because the firm specified an acceptance period that was less than the minimum required by the IFB.

We deny the protest.

The Army issued the solicitation on January 17, 1985. Because of problems encountered in the evaluation of the two lowest bidders, on March 27 the Army extended the contract of the incumbent, Colbar, Inc., for a 6-month period. (Rice protested this allegedly improper extension to the agency, but appears to have abandoned this basis of protest in submissions to our Office.)

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The IFB contained the standard minimum bid acceptance period clause set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-16 (1984). Pursuant to the regulation, the contracting officer had inserted 120 as the number of days that bids must remain open, and the IFB specifically stated that bids which provided less than this period would be rejected. Rice's bid, however, contained a typewritten acceptance period of 90 days. Because the 120-day period was to expire on June 25, the Army, by letter of June 13, requested all responsive bidders to extend their bids by an additional 60 days. The Army did not request Rice to do so because, as noted above, it considered the firm's bid nonresponsive.

The Minimum Bid Acceptance Period clause, as completed by Rice with the entry of the number "90," reads in pertinent part:

"c. The Government requires a minimum acceptance period of 120 calendar days.

"d. In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

"The bidder allows the following acceptance period: 90 calendar days.

"e. A bid allowing less than the Government's minimum acceptance period will be rejected.

"f. The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above, or (2) any longer acceptance period stated in paragraph (d) above."

Rice argues that in rejecting its bid, the Army relied on decisions of our Office that were rendered before the effective dates of the FAR and the Competition in Contracting Act of 1984, amending 10 U.S.C. §§ 2301-2311 (West Supp. 1985). According to Rice, these decisions address "minimum acceptance clauses quite different from the present FAR clause which the government drafted in the subjunctive (i.e., 'either A or B if B is larger') rather than the pre-FAR disjunctive (i.e., 'either A or B')." Rice contends that the FAR clause, for inclusion in solicitations issued on or after April 1, 1984, differs from the pre-FAR clause, which "relied upon a single contractor choice to accept or reject a minimum number of days."

Rice maintains that under paragraph (d) of the FAR clause, above, bidders may either accept the 120-day acceptance period or choose a longer period, and that the shorter period offered by Rice is therefore ineffective. Rice attempts to distinguish paragraph (e) by arguing:

"The language of paragraphs (c), (d), and (f) precludes the assignment of any contractual significance to either the omission of a number, or the insertion of a number not longer than 120 days, in the blank space provided within paragraph (d). Paragraph (e) addresses situations in which the bidder limits its acceptance period by putting the government on notice, in a legally binding manner, that its bid is open for less than the 120-day minimum. Paragraph (d) by its very terms does not allow a bidder to limit its bid acceptance period. To a period shorter than 120 days. [sic]" (Emphasis in original.)

Rice interprets paragraph (f) of the FAR clause as an express promise to perform the contract if its bid is accepted within 120 days unless a longer period is inserted in the space provided.

We find no merit to Rice's argument. Contrary to the firm's assertion, we have held--pursuant to the FAR--that a solicitation provision that requires a bid to remain available for acceptance by the government for a prescribed time is a material requirement. See, for example, Central States Bridge Co. Inc., B-219559, Aug. 9, 1985, 85-2 CPD ¶ 154 (solicitation issued June 12, 1985); Legeay, Inc., B-218307, May 22, 1985, 85-1 CPD ¶ 338 (solicitation issued January 29, 1985). A bid that does not comply with such a requirement must be rejected as nonresponsive. Ames Construction, Inc., B-210578, Feb. 14, 1983, 83-1 CPD 156. To hold otherwise affords the bidder that limits its acceptance period an unfair advantage, because that bidder can refuse the award after its bid had expired if, for example, unanticipated increases in costs occur. On the other hand, bidders that comply with the required acceptance period are bound by the government's acceptance any time within that period. Amendola Construction Co., Inc., B-214258, Feb. 28, 1984, 84-1 CPD ¶ 255.

Although solicitations issued before April 1, 1984, contained language pertaining to the minimum bid acceptance period which differs from that of the FAR, the effect of the clause remains the same. The pre-FAR clause was contained on the first page of standard form (SF) 33, "Solicitation, Offer and Award," and stated:

" . . . the undersigned agrees, if this offer is accepted within \_\_\_\_ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are set opposite each item, delivered at the designated point(s), within the time specified in the schedule."

In order to require a minimum acceptance period, rather than merely request one, a pre-FAR solicitation also had to include and cross-reference a "Special Conditions" clause that stated:

"Bids offering less than \_\_\_\_ days for acceptance by the government from the date set for opening will be considered non-responsive and rejected."

See International Medical Industries, Inc., 62 Comp. Gen. 31 (1982), 82-2 CPD ¶ 386; Professional Materials Handling Co., Inc.,--Reconsideration, 61 Comp. Gen. 423 (1982), 82-1 CPD ¶ 501.

In this case, the Army's solicitation, by its terms, requires a minimum acceptance period of 120 days; it does not merely request that period. Moreover, the solicitation specifically provides that a bid allowing less than the minimum acceptance period will be rejected. Paragraph (d) of the FAR clause plainly would have allowed Rice to specify an acceptance period longer than 120 days; in our opinion, however, when read with paragraph (e), it does not permit Rice to specify a shorter acceptance period and remain responsive.

Although Rice correctly points out that paragraph (f) indicates that the bidder "agrees to execute all that it has undertaken to do in compliance with its bid," Rice did not undertake in its bid to provide a 120-day acceptance period. At best, Rice's bid was ambiguous as to whether it remained open for 90 or 120 days, and the Army therefore was required to reject it as nonresponsive. See Southwest Boat Corp., Sept. 10, 1984, 84-2 CPD ¶ 276; Union Metal Manufacturing Co., Electroline Division, Nov. 2, 1982, 82-2 CPD ¶ 402.

We conclude that that the Army could not properly have asked Rice to extend its bid, and we deny the protest.

*for*   
Harry R. Van Cleve  
General Counsel